IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1323 of 2002

Bombay Gas Company Ltd ... Petitioner

versus

M/s Havish Shankar Phadke & anr .. Respondents.

Ms.S.Kher with Mr Deepak Poonamiya i/b RMG Law Associates for Petitioner

None for Respondents

CORAM : D.G. KARNIK, J

DATED : 7th June 2005.

P.C.

1. Heard learned counsel for the petitioner. None present for the respondents. This petition is directed against the order dated 22nd February, 2002 passed by the 2nd respondent - Presiding Officer, 12th Labour Court, Mumbai rejecting the petitioner's application praying at the threshhold that the application filed by the respondent no.1 under section 33 (c) (2) of the Industrial Disputes Act, 1947 be dismissed on the ground that on the date of the application the respondent no.1 was not an employee of the company nor

was he an employee of the company for the period for which wages were claimed by him.

2. The petitioner is a company which was engaged in the business of production and distribution of coal gas. The respondent no. 1 who was its employee, was suspended from work with effect from 4th July, 1981 pending enquiry. During the pendency of his suspension the employees of the petitioner resorted to strike with effect from 29th July, 1981 and the strike was declared as illegal by the Labour Court on 24th August, 1981. Thereafter for a brief period there was resumption of manufacturing activities by the petitioner but on account of complaints of environmental pollution, financial difficulties and labour disputes it became impossible for the petitioner to continue its business. Therefore on 17th September, 1983 the Company issued a notice of its intention to close down the undertaking under section 25 FFA of the Industrial Disputes Act, 1971 (for short I.D.Act). On the same day the Company also issued a notice to all its employees including the respondent no. 1 of termination of his service with effect from 26th December, 1983 in view of the intended closure of the undertaking. The Company also made an application for permission for closure under section 25-O of the I.D.Act. By an order dated 23rd November,

1983 the Minister of State for Labour, Government of Maharashtra granted the permission for closure of the undertaking with immediate effect. However, on an appeal filed under the Maharashtra Amendment to section 25-O of the I.D.Act was allowed by the Industrial Tribunal on 13th March, 1987. The order of the Industrial Tribunal was challenged by the petitioner by filing of a Writ Petition No. 2067 of 1987 in this Court. By the judgment and order dated 7th April, 2000 (reported in 2000 (II) CLR 427), this Court set aside the order of the Industrial Tribunal and restored the order dated 23rd September, 1983 passed by the Minister of State for Labour, Government of Maharashtra allowing the closure of the undertaking. Special Leave Petition filed in the Supreme Court against the judgment of the Division Bench was dismissed on 18th August, 2000. In pursuance of an order passed by the Minister of State for Labour, Government of Maharashtra granting permission under section 25-O the petitioner has closed down its undertaking and has paid compensation payable under section 25-O (A) and section 25-FFF of the I.D.Act to the respondent no. 1.

3. In the meanwhile, relying upon the order passed by the Industrial Tribunal setting aside the order for permission for closure granted by the Government, the

trade union representing the workmen filed a complaint bearing U.L.P. Complaint No. 82 of 1997 under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short MRTU and PULP Act) alleging that the petitioner had not paid the wages of the employees from October, 1983 to 31st October, 1996 and prayed for an order of payment of wages. Before the said complaint could be heard the Division Bench of this Court had allowed the writ petition and had restored the order of the Government of Maharashtra granting permission for closure of the undertaking. In view of the said order in Writ Petition, the Industrial Court dismissed Complaint No. 82 of 1997 filed by the trade union claiming wages for the period from October, 1983 to 31st October, 1996 on the ground that the undertaking was closed with effect from 26th December, 1983 and since services of all the employees were terminated there was no question of payment of any salary to the employees.

4. In the meanwhile, the respondent no.1 had also filed a separate petition bearing Application No. 854 of 1996 purportingly under section 33 (C) (2) of the I.D.Act claiming wages for the period from 1st January, 1984 to November, 1996. In the said petition the petitioner made an application that in view of the fact

that the undertaking of the petitioner was closed down and closure was held to be valid by the Division Bench of this Court there existed no relationship of employer and employee between the petitioner and the respondent no. 1 and that the respondent no. 1 had ceased to be the employee of the petitioner with effect from 26th December, 1983 and therefore, the petition was not maintainable. By the impugned order dated 22nd February, 2002 the petitioner's application was rejected. That order is impugned in this petition.

5. I have perused the order of the Division Bench of this Court passed in Writ Petition No. 2067 of 1987. By the said judgment the Division Bench has not only restored the order of the Government of Maharashtra granting permission for closure of the undertaking but has also further held that the petitioner company was required to close down its undertaking for the reasons beyond its control. The closure was held to be bonafide. As stated earlier the Special Leave Petition against the judgment of the Division Bench has been dismissed. It therefore cannot be disputed that the undertaking of the petitioner company has been finally closed down with effect from 26th December, 1983 and services of its all employees including that of the petitioner stand terminated. Learned counsel for the

petitioner reiterates that the compensation payable to the workmen on account of termination of services has been paid as provided under the I.D.Act. It is clear that the respondent no. 1 is not an employee of the petitioner with effect from 26th December, 1983. In view of this, the respondent no. 1 is clearly not entitled to claim wages from 1st January, 1984. The application under section 33 (C) (2) of the I.D.Act by the respondent no. 1 for wages beyond 26th December, 1983 cannot be entertained as the respondent no. 1 was not a workmen either on the date of the application or even during the period for which the salary has been claimed.

6. In the circumstances, the Labour Court ought to have allowed the application made by the petitioner for dismissing the petitioner’s petition under section 33 (C) (2) of the I.D.Act. Accordingly, Writ Petition is allowed and Rule is made absolute in terms of prayer clause (a).

D.G.KARNIK, J